



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***

## ETHICS ADVISORY OPINION NO. 382

*November 14, 1997*

*Questions about the interpretation of Election Code section 253.1611, a provision added to the Judicial Campaign Fairness Law in the 1997 Legislative Session. (AOR-422)*

The Texas Ethics Commission has been asked to consider several questions about the interpretation of Election Code section 253.1611, a provision added to the Judicial Campaign Fairness Law in the 1997 Legislative Session. Section 253.1611 provides as follows:

- (a) A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not use a political contribution to make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder.
- (b) A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to make political contributions to a political committee in connection with a primary election.
- (c) A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in connection with a general election, exceeds \$500.
- (d) A judicial officeholder or a specific-purpose committee for assisting a judicial officeholder may not use a political contribution to make a political contribution to a political committee in any calendar year in which the office held is not on the ballot.
- (e) This section does not apply to a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party.
- (f) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political contributions used in violation of this section.

The first question raised is about subsection (d). The issue is the legal effect of a promise in 1997 by a judicial officeholder who holds an office that will be on the ballot in 1998 or a specific-purpose committee assisting the officeholder to make a payment to a political committee in 1998.

A pledge to make a payment in the future is a contribution, and the date of the contribution is the date the pledge is accepted. [Ethics Advisory Opinion No. 231](#) (1994). Therefore a candidate or officeholder would be making a political contribution in 1997 if a political committee accepted an offer in 1997 of a payment to be made in 1998.

The next question is whether a judicial candidate who is not an officeholder or a specific-purpose committee supporting a judicial candidate may make a contribution (from political contributions) to a political committee in

1997 if the office the candidate is seeking will be on the ballot in 1998. Subsection (d) does not prohibit the contribution in question. A contribution from the candidate or the specific-purpose political committee would, however, be subject to the restrictions in subsections (b) and (c).

The requestor also asks when an officeholder becomes a candidate for purposes of section 253.1611. The definition of "candidate," for purposes of that section, is set out in Election Code section 251.001(1). For example, a person who has a campaign treasurer appointment on file is a candidate for purposes of section 253.1611. Elec. Code § 251.001(1)(A). An officeholder who is also a candidate, as that term is defined in section 251.001(1), is subject to the restrictions in section 253.1611 applicable to candidates as well as the restrictions applicable to officeholders.

The last question is about the amount of contribution a person makes if the person purchases a \$15 ticket to a fundraiser at which the person is provided \$7 worth of food. The person has made a \$15 contribution. The amount of the contribution is not reduced by the value of any consideration received. *See id.* § 251.001(2) (defining contribution to include any transfer); [Ethics Advisory Opinion No. 143](#) (1993).

### SUMMARY

A pledge to transfer money to a political committee for political purposes is a political contribution. The date of the contribution is the date the pledge is accepted.

An officeholder who is also a candidate, as that term is defined in Election Code section 251.001(1), is subject to the restrictions in Election Code section 253.1611(d) applicable to candidates as well as those applicable to officeholders.

The amount of a political contribution is not reduced by the amount of any consideration received in exchange for the contribution.